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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 LA CENTURY TEXTILES, INC., a
California Corporation,

15 Plaintiff,
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17 v.
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19 ZULILY, LLC, a Washington Limited
Liability Company; KID'S DREAM US,
20 a business entity of form unknown,
individually and doing business as
21 WWW.KIDSDREAMUS.COM; and
22 DOES 1-10, inclusive,
23

24 Defendants.
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Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR CONTRIBUTORY COPYRIGHT INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, LA CENTURY TEXTILES, INC. (“Century”), by and through its
2 undersigned attorneys, hereby prays to this honorable Court for relief based on the
3 following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §§ 101,
6 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and
8 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. Plaintiff CENTURY is a corporation organized and existing under the laws
14 of the State of California with its principal place of business in Los Angeles County.

15 5. Plaintiff is informed and believes and thereon alleges that Defendant
16 ZULILY, LLC (“ZULILY”) is a Washington limited liability company doing
17 business in and with California.

18 6. Plaintiff is informed and believes and thereon alleges that Defendant KID’S
19 DREAM US is a business entity of form unknown, doing business individually, and
20 as WWW.KIDSDREAMUS.COM (collectively “DREAM”), in and with California.

21 7. Plaintiff is informed and believes and thereon alleges that Defendant Does
22 1-4, inclusive, are manufacturers, and/or vendors (and/or agent or employee of
23 manufacturers or vendors) of garments to Defendant, which Doe Defendants have
24 manufactured and/or supplied and are manufacturing and/or supplying fabrics and
25 other product printed with Plaintiff’s copyrighted design (as hereinafter defined)
26 without Plaintiff’s knowledge or consent or have contributed to said infringement.
27 The true names, whether corporate, individual or otherwise of Defendants Does 1-4,

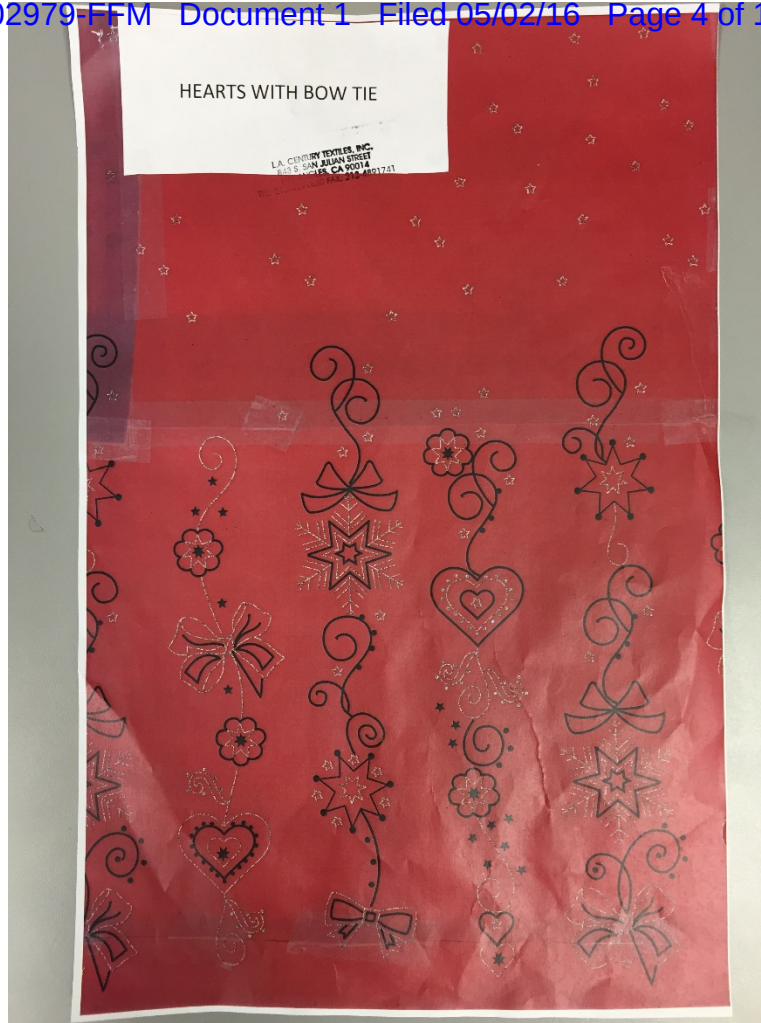
1 inclusive, are presently unknown to Plaintiff, which therefore sues said Defendants
2 by such fictitious names and will seek leave to amend this complaint to show their
3 true names and capacities when same have been ascertained.

4 8. Defendants Does 5 through 10, inclusive, are other parties not yet
5 identified who have infringed Plaintiff's copyrights, have contributed to the
6 infringement of Plaintiff's copyrights, or have engaged in one or more of the
7 wrongful practices alleged herein, including but not limited to retail stores and others
8 who have sold the garments at issue in this case. The true names, whether corporate,
9 individual or otherwise, of Defendants 5 through 10, inclusive, are presently
10 unknown to Plaintiff, which therefore sues said Defendants by such fictitious names,
11 and will seek leave to amend this Complaint to show their true names and capacities
12 when same have been ascertained.

13 9. Plaintiff is informed and believes and thereon alleges that at all times
14 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
15 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
16 at all times acting within the scope of such agency, affiliation, alter-ego relationship
17 and/or employment; and actively participated in or subsequently ratified and
18 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
19 all the facts and circumstances, including, but not limited to, full knowledge of each
20 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
21 caused thereby.

22 **CLAIMS RELATED TO THE SUBJECT DESIGN**

23 10. Plaintiff owns United States Copyright Registration number VA 1-942-685,
24 which covers a textile design titled "Hearts with Bow Tie" ("Subject Design"). A
25 true and correct image of the Subject Design is set forth below:
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11. The Subject Design is, and at all relevant times was, owned in exclusivity by Plaintiff, and was distributed and published to Plaintiff's customers and the market before the infringement complained of herein.

12. Plaintiff is informed and believes and thereon alleges that, following this distribution, and without Plaintiff's authorization, Defendants, and each of them purchased, marketed, distributed, and sold fabric and garments bearing a textile design that was substantially similar to the Subject Design (the "Infringing Product").

13. Below is a comparison of the Subject Design (left) and an exemplar of the Infringing Product sold by Defendants (right), and each of them. A comparison reveals that the elements, composition, arrangement, layout, shading, and appearance of the textile design featured on the Infringing Product is at least substantially similar to Plaintiff's Subject Design:

SUBJECT DESIGN:	INFRINGING PRODUCT EXEMPLAR:
	

14. Plaintiff is informed and believes and thereon alleges that Defendants copied without Plaintiff's permission the Subject Design in order to create the Infringing Product.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement - Against All Defendants)

15. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

16. Plaintiff is informed and believes, and thereon alleges, that prior to Defendants, and each of their, manufacture and/or sale of the Infringing Product, it

1 had obtained the Subject Design from the marketplace and/or a third party and then
2 had made at most slight alterations to the Subject Design and/or its coloration in an
3 attempt to evade detection for its infringement.

4 17. Plaintiff is informed and believes and thereon alleges that, without
5 Plaintiff's authorization, Defendants, and each of them, advertised in print and on the
6 internet, purchased, sold, manufactured, caused to be manufactured, imported and/or
7 distributed fabric and/or garments comprised of fabric featuring a design that is at
8 the very least substantially similar to the Subject Design .

9 18. Plaintiff is informed and believes and thereon alleges that Defendants, and
10 each of them, had access to the Subject Design, including, without limitation,
11 through (a) access to Plaintiff's showroom and/or design library; (b) access to
12 illegally distributed copies of the Subject Design or garments bearing same by third-
13 party vendors and/or Doe Defendants, including without limitation international
14 and/or overseas converters and printing mills; (c) access to Plaintiff's strike-offs and
15 samples; and (d) access to garments manufactured with fabric lawfully printed
16 through Plaintiff.

17 19. Plaintiff is informed and believes and thereon alleges that one or more of
18 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
19 further informed and believes and thereon alleges that said Defendant(s) has an
20 ongoing business relationship with Defendant retailer(s), and each of them, and
21 supplied garments to said retailer(s), which garments infringed Plaintiff's rights in
22 the Subject Design in that said garments were composed of fabric which featured an
23 unauthorized print design that was identical or substantially similar to the Subject
24 Design.

25 20. Plaintiff is informed and believes and thereon alleges that Defendants, and
26 each of them, infringed Plaintiff's copyrights by creating, making and/or developing
27 directly infringing and/or derivative works from the Subject Design and by

1 producing, distributing and/or selling garments that infringe Plaintiff's rights in the
2 Subject Design through a nationwide network of retail stores and on-line outlets.

3 21. Due to Defendants' acts of infringement, Plaintiff has suffered substantial
4 damages to its business in an amount to be established at trial.

5 22. Due to Defendants' acts of infringement, Plaintiff has suffered general and
6 special damages in an amount to be established at trial.

7 23. Due to Defendants' acts of copyright infringement as alleged herein,
8 Defendants, and each of them, have obtained direct and indirect profits they would
9 not otherwise have realized but for their infringement of the Subject Design. As
10 such, Plaintiff is entitled to disgorgement of each of Plaintiff's rights in the
11 Defendants' profits directly and indirectly attributable to Defendants' infringement
12 of Plaintiff's rights in the Subject Design in an amount to be established at trial.

13 24. Plaintiff is informed and believes, and thereon alleges that Defendants, and
14 each of them, infringed Plaintiff's rights in the Subject Design with knowledge that
15 the Subject Design was the copyrighted property of Plaintiff and/or with knowledge
16 that their respective uses of the Subject Design was in violation of Plaintiff's
17 copyrights in the Subject Design, and/or in a reckless manner in such a way as to
18 render Defendants, and each of them liable for willful infringement. Plaintiff is also
19 informed and believes, and thereon alleges, that Defendants, and each of them, sold
20 the Infringing Products after receiving notice of the infringing nature of same,
21 further militating in favor of a finding of willful infringement. The foregoing
22 conduct exposes Defendants to liability for statutory damages of up to \$150,000.00
23 and/or a preclusion against deductions and apportionment when calculating
24 damages.

25 **SECOND CLAIM FOR RELIEF**

26 (For Vicarious and/or Contributory Copyright Infringement - Against All
27 Defendants)

1 25. Plaintiff repeats, realleges and incorporates herein by reference as though
2 fully set forth the allegations contained in the preceding paragraphs of this
3 Complaint.

4 26. Plaintiff is informed and believes and thereon alleges that Defendants
5 knowingly induced, participated in, aided and abetted in and profited from the illegal
6 reproduction and/or subsequent sales of product featuring the Subject Design as
7 alleged hereinabove.

8 27. Plaintiff is informed and believes and thereon alleges that Defendants, and
9 each of them, are vicariously liable for the infringement alleged herein because they
10 had the right and ability to supervise the infringing conduct and because they had a
11 direct financial interest in the infringing conduct.

12 28. By reason of the Defendants', and each of their, acts of contributory and
13 vicarious infringement as alleged above, Plaintiff has suffered and will continue to
14 suffer substantial damages to its business in an amount to be established at trial, as
15 well as additional general and special damages in an amount to be established at
16 trial.

17 29. Due to Defendants' acts of copyright infringement as alleged herein,
18 Defendants, and each of them, have obtained direct and indirect profits they would
19 not otherwise have realized but for their infringement of Plaintiff's rights in the
20 Subject Design. As such, Plaintiff is entitled to disgorgement of Defendants' profits
21 directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in
22 the Subject Design, in an amount to be established at trial.

23 30. Plaintiff is informed and believes, and thereon alleges that Defendants, and
24 each of them, infringed Plaintiff's rights in the Subject Design with knowledge that
25 the Subject Design was the copyrighted property of Plaintiff and/or with knowledge
26 that their respective uses of the Subject Design was in violation of Plaintiff's
27 copyrights in the Subject Design, and/or in a reckless manner in such a way as to
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render Defendants, and each of them liable for willful infringement. Plaintiff is also informed and believes, and thereon alleges, that Defendants, and each of them, sold the Infringing Products after receiving notice of the infringing nature of same, further militating in favor of a finding of willful infringement. The foregoing conduct exposes Defendants to liability for statutory damages of up to \$150,000.00 and/or a preclusion against deductions and apportionment when calculating damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

Against All Defendants

With Respect to Each Claim for Relief

- a. That Defendants, their agents and employees be enjoined from infringing Plaintiff's copyrights in any manner, specifically those for the Subject Design;
- b. That Plaintiff be awarded all profits of Defendants plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages as available under the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. §§ 101, *et seq.*;
- d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- e. That Plaintiff be awarded the costs of this action;
- f. That a constructive trust be imposed over the product at issue, and any profits derived from the sales thereof; and
- g. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

1 A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
2 CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

3 Respectfully submitted,

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5 Dated: May 2, 2016

6 By: /s/ Scott Alan Burroughs
7 Scott Alan Burroughs, Esq.
8 Trevor W. Barrett, Esq.
9 DONIGER / BURROUGHS
10 Attorneys for Plaintiff
11 FRENCH WEST, INC.
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